

# The Duel-Level Domestic Legal Situation of Russia's Peoples of the Far North

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## **Introduction**

It is difficult to fully grasp or appreciate the ethnic complexity of the Russian Federation. Despite national pressures over the better part of a century to assimilate indigenous communities, including the circumpolar indigenous peoples, indigenous communities have been able to maintain many cultural traditions. Today, indigenous associations and leaders, much like their international counterparts, are attempting to renegotiate their relationships with the state. However, the complex structure of Russian law necessitates that indigenous peoples need to further engage beyond lobbying and nation-state relationship building efforts.

The legal status of the Russian Indigenous Peoples of the North (RAIPON) is designated at a division between the regional and national levels, thus creating problems for indigenous rights and mobilization. While indigenous laws are often examined at the international level (given RAIPON

membership in groups like the Arctic Council), this approach disregards the challenges existing in Russia's domestic politics. The purpose of this article is to articulate the legal situation for Russia's indigenous peoples of the North, as a result of the regional/national divide in lawmaking and enforcement that creates a challenging gap for indigenous mobilization and rights gains.

By focusing on the legal intricacies of indigenous classifications in the immediate post-Soviet years, I am able to review the influential legal and mobilization development. Further, I examine contemporary hostilities between the Russian government and RAIPON, Russia's foremost Arctic indigenous association. I then discuss the links between indigenous rights and civil society, and how these connections challenge indigenous mobilization. I conclude with the implications of recent legal developments in Russia, and present three recommendations on how indigenous groups in Russia may move forward in the complex and unreceptive environment.

## **Scope and History of Domestic Recognition**

Out of 180 ethnic groups inhabiting Russia, only 46 are officially recognized as "indigenous small-numbered peoples of the North, Siberia, and the Far East". To be considered an indigenous group,

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and thus qualify for specific protections and state recognition, a group must not exceed 50,000 members, must maintain a traditional way of life, must live in areas that have traditionally been inhabited by their ancestors, and must self-identify as a distinct ethnic community.<sup>1</sup> Consequently, there are less than 270,000 individuals recognized by this classification, or less than 0.2% of Russia's total population.<sup>2</sup> The numerical threshold of 50,000 has been critiqued as an artificial legal category introduced by the Russian national government and contributes to asymmetrical legislative protection across ethnic groups<sup>3</sup>; the Nogay and Altai Kezhi groups are excluded from certain legal protections because they have more than 50,000 members.<sup>4</sup> While the size of the group matters for domestic classification purposes, all circumpolar indigenous peoples are

recognized according to international law.<sup>5</sup>

The foundations of the contemporary legal situation for indigenous peoples emerged in the 1990s. The collapse of the Soviet Union led to a growing movement to create a minority policy within authoritarian regimes, as former Soviet states experienced ethnic awakenings while engaging in various approaches in the use of policy, symbols, and narratives.<sup>6</sup> The presence of ethnic minorities or indigenous peoples led to specialized state policy to address these groups, whether for the purposes of rights gains or denial.<sup>7</sup> In the case of the new Russian Federation Constitution, indigenous rights were acknowledged in vague terms, guaranteeing rights "in accordance with generally recognized principles of international law,"<sup>8</sup> while sharing responsibility with local offices for the defense of land and traditional livelihoods.<sup>9</sup> Because of the limited

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<sup>1</sup> Russian Federation, Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation, adopted by State Duma, 16 Apr. 1999 and approved by Council of the Federation, 22 Apr. 1999.

<sup>2</sup> Yuri Slezkine, *Arctic Mirrors: Russia and the Small Peoples of the North* (Ithica: Cornell University Press, 1994).

<sup>3</sup> The list of included peoples was finalized by Decree of the Government of the Russian Federation on April 17<sup>th</sup>, 2006. No.536-p, № 17. P.2. Cl. 190. Russian Federation Code. 2006.

<sup>4</sup> A. Tomaselli and A. Koch, "Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments," *International Indigenous Policy Journal* 5, no. 4 (2014): 1–23.

<sup>5</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169.

<sup>6</sup> A.H. Miller, G. Gurin, and O. Malanchuk, "Group Consciousness and Political Participation," *American Journal of Political Science* 25, no. 3 (1981): 494–511.

<sup>7</sup> K. Chandra, "What Is Ethnic Identity and Does It Matter?," *Annual Review of Political Science* 9, no. 1 (2006): 397–424.

<sup>8</sup> Article 69, Gazette of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR (*Vedomosti S'ezda narodnykh deputatov i Verkhovnogo Sovyeta RSFSR*). 1991. №22. Cl.768.

<sup>9</sup> Article 72, Gazette.

rights Far North groups had in practice, several communities opted for autonomy under the 1996 Federal Law on National Cultural Autonomy and the 1999 Indigenous Rights Law.<sup>10</sup>

Currently, only one international instrument protects the rights of indigenous peoples: the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169 (ILO Convention 169), adopted by the International Labour Organisation (ILO) in 1989. The Russian Federation has not signed the instrument despite international pressure.

### **Domestic Recognition Pursuits**

The management of land rights is divided between regional and federal authorities in Russian law. While Article 26 of the Constitution states that land use is subject to federal law, Article 74 promotes “considerable deference” to regional authorities. The blurred policymaking rules have allowed for inconsistent policies across Russia’s subdivisions. Furthermore, regional variation established in the early post-Soviet years resulted in minimal policy

change at the national level.<sup>11</sup> As a result of the two-level segmentation of law, indigenous groups must seek legal recognition and rights gains through both regional and national efforts.

### *Regional Rights Pursuits*

Legal areas of concern for local movements tend to center on the possession, management, and use of natural resources, along with the protection of historical and cultural monuments.<sup>12</sup> There have been significant challenges to land and natural resource rights since the implementation of the Constitution. In the 2000s, the Ministry of Regional Development created a plan for sustainable development that received considerable attention and approval from indigenous peoples of the North. Later, regional ministries, not indigenous bodies, were incorporated in the development process.<sup>13</sup> In 2015, articles stipulating that local authorities could determine places of traditional residence and activities, and thus deserving of protection, were revoked. Consequently, local authorities lost

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<sup>10</sup> Federal Law on the Guarantees of the Rights of Indigenous Numerically Small Peoples of the Russian Federation. Adopted by the State Duma, April 16, 1999.

<sup>11</sup> Ahlness, Ellen. “Federal or Regional Initiatives: Origins of Authoritarian Indigenous Policy.” Paper presented at the Asia in the Russian Imagination Conference, Salt Lake City, UT. February 2018.

<sup>12</sup> Alexandra Xanthaki, “Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North,” *Human Rights Quarterly* 26, no. 1 (2004): 74–105; V.A Kryazhkov, “Development of Russian Legislation on Northern Indigenous Peoples,” *Arctic Review of Law and Politics* 4, no. 2 (2013): 140–55.

<sup>13</sup> Tamara Semenova, “Political Mobilisation of Northern Indigenous Peoples in Russia,” *Polar Record* 43, no. 1 (2007): 23–32.

authority to protect indigenous land from encroaching resource extractors.

National attempts to undermine regional power affect autonomous oblasts and okrugs as well, particularly those that have limited means to support indigenous aspirations.<sup>14</sup> Regional variations in the abilities of groups to capitalize on their rights have already emerged, shaped in part by the variation in organization among local indigenous movements.<sup>15</sup> To illustrate, a 1992 presidential edict called for the allocation of lands to associations of northern indigenous communities. While several thousand associations have organized, resulting in greater control over traditional activities, the lack of financial means and opposition by state officials has compromised the movement in other regions.

Another case of regional variance examines the Sakha Republic (Yakutia) and its progressive indigenous rights. In part, the Republic established “exclusive jurisdiction” over indigenous and minority issues early on, addressing the use of traditional lands and resources, language status, and control over justice systems.<sup>16</sup> The Yukagir peoples, one of the smallest and most vulnerable of the indigenous groups, find many of their language and land rights aligned against

more influential industry-interest groups. The continuation of Yukagir land management has been attributed to Sakha government support.

While it is typical for political subdivisions to experience decreasing autonomy as centralization progresses, Russia experienced a stagnation of federal legislation on indigenous peoples in the latter part of the 2000s. The elimination of state bodies specifically responsible for northern issues resulted in power consolidation at the regional level. While federal policy focuses on broad human and civil issues, regional bodies produce legislation that is “supplemental, more specific, and remedial”.<sup>17</sup> In 2014, Parliament disbanded the Ministry for Regional Development, and its functions were divided among regional ministries. Indigenous advocates criticized this decree, placing indigenous peoples under the jurisdiction of regional Culture Ministries, which often lack the economic ability to meet the needs of underserved, rural people. Ultimately, while the right to consultation on developments is offered by the state to indigenous nations, it is not guaranteed; rather, it is linked to the goodwill and ability of local authorities.

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<sup>14</sup> Semenova.

<sup>15</sup> Slezkine, *Arctic Mirrors: Russia and the Small Peoples of the North*; Nikolai Vakhtin, “Native Peoples of the Russian Far North,” in *Polar Peoples: Self Determination and Development* (London: Minority Rights Group, 1994), 29–80.

<sup>16</sup> Sakha Republic, art. 38, 43–44, 98.

<sup>17</sup> Kryazhkov, “Development of Russian Legislation on Northern Indigenous Peoples.”

### *National Obstructions and Repeals*

Many challenges persist at the national level that limit indigenous rights in Russia. Federal policymaking is sluggish, lacking, and in some cases repealed. This results in the denial of the unique needs and recognition of indigenous peoples by the state. The only federal law that affords recognition of indigenous land tenure is the Law on Territories of Traditional Nature Use, ratified in 2001; however, this law is applied inconsistently and is internally problematic. At the time of writing, no regional Territories of Traditional Use have been ratified at the federal level, despite international pressure from states, indigenous associations, and international organizations. This limits the ability of indigenous peoples to inherit traditional lands, have open access to traditional hunting and fishing grounds on a sole source basis, organize local self-government to settle community matters, and increase quotas within local legislative and representative bodies.

Three years after the Law on Territories of Traditional Nature Use was passed, the federal government repealed the federal law on the Basics of the State Regulation of Social and Economic Development of the North of the Russian

Federation, further denying policy considerations specific to indigenous peoples of the North. The Russian Constitution implies indigenous peoples have a protected status, but laws are often interpreted otherwise by provinces. A 2009 hunting law distributing lands for long-term lease resulted in huge discrepancies in regional interpretation; a 1995 law changed the category of 'fish' to 'objects of the animal world,' creating confusion and inconsistency in regional quotas. These cases illustrate a lack of coordinated administration and the capacity for regional authorities to exercise significant discretion.<sup>18</sup> More recently, 2017 saw a regulatory change that made fishing activities more difficult for indigenous peoples. With the legal change, indigenous peoples were no longer allowed to fish without special permits and were required to go through a lengthy license application process that dictated the time, location, and bounty allowed for fishing. This regulatory change is one case in a pattern of rights reductions by the state.<sup>19</sup>

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<sup>18</sup> Kryazhkov; Tomaselli and Koch, "Implementation of Indigenous Rights in Russia: Shortcomings and Recent Developments."

<sup>19</sup> See also: amendments to the Federal Law of 1995, cl. 48 made in 2010 (SZRF no. 1 cl.32), the Law on Fisheries and Conservation of Aquatic Bioresources (SZRF 2004, no. 52 cl. 5270), and Law on Hunting and Conservation of Game Resources and Amendment of Certain Legal Acts of the Russian Federation (SZRF 2009, no. 30 cl. 3735).

## *Analysis of the Domestic Rights Environment*

Despite the complexity of having to deal with two legal levels in Russia, circumpolar indigenous peoples have moved from relative powerlessness prior to Gorbachev's efforts to reform and the eventual collapse of the Soviet Union to making significant strides toward reasserting self-determination during the post-Soviet era. The indigenous peoples' relationship with the legal system was shaped through several developments in the early 1990s. First, native communities took advantage of the new policies of glasnost and perestroika to engage in domestic association-forming. Second, indigenous leaders formed a knowledge community to interact with Russian political leadership. Third, and finally, Northern communities partnered with international indigenous associations to identify and mobilize in response to domestic obstacles and global crises threatening them. These developments shaped the environment for international organizations and nonstate actors to interact with indigenous

peoples as Russia re-integrated itself into the world community.<sup>20</sup> The Russian Association for Indigenous Peoples of the North (RAIPON) is the foremost nongovernmental organization whose engagement with the Russian state is shaped by post-Soviet processes.

### *The Role of RAIPON in an Obstinate State*

Russia has a multitude of local, regional, and interregional indigenous organizations, and the national umbrella organization, RAIPON, operates under tight state control. With the legal status as a federal non-government organization (NGOs), RAIPON takes an active role in advancing the rights of indigenous peoples. In its first decade, RAIPON participated in the development of three key laws related to Northern indigenous needs.<sup>21</sup> While addressing indigenous needs, there remain a number of areas where indigenous-state land use and co-management compromises have yet to be reached. Generally, RAIPON tends to focus on language and land rights for the peoples of the Far North.<sup>22</sup>

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<sup>20</sup> Xanthaki, "Indigenous Rights in the Russian Federation: The Case of Numerically Small Peoples of the Russian North."

<sup>21</sup> On the Guarantees of the Rights for Indigenous Peoples in the Russian Federation, On Basic Principles for the Establishment of Communities of Indigenous Peoples of the North, Siberia, and the Far East in the Russian Federation, and On the Traditional Land Use Areas of the Indigenous Peoples of the North, Siberia, and the Far East in the Russian Federation.

<sup>22</sup> European Research Centre on Multilingualism and Language Learning, "Nents, Khanty, and Selkup Language in Education in the Yamal Region in Russia [Regional Dossiers Series]" (2016), [https://www.mercator-research.eu/fileadmin/mercator/documents/regional\\_dossiers/nenets\\_khanty\\_and\\_selkup\\_in\\_Russia\\_1st.pdf](https://www.mercator-research.eu/fileadmin/mercator/documents/regional_dossiers/nenets_khanty_and_selkup_in_Russia_1st.pdf).

The Russian federal government's tight reins on RAIPON are credited to the organization's threatening connections with international organizations and liberal intergovernmental forums. The government seeks to minimize or eliminate this enmeshment with its policies on civil society and NGOs. Laws affecting indigenous groups and their mobilization are heavily integrated with laws meant to control civil society. Indigenous relationships were impacted by Russia's legal crackdown on civil society and NGOs. Indeed, RAIPON was suspended in November 2012 under an order by the Ministry of Justice for failing to comply with symbol, office location, and subsidiary registration, and remained suspended until April 2013. While RAIPON made the required amendments to its charter and registration, the state refused to accept the amendments. During this time, indigenous peoples of the North feared the suspension of rights and the dismantling of RAIPON. While the association appealed in district courts<sup>23</sup>, it was not until the association submitted its registration to the state that the suspension was repealed.

### **Implications of Bi-level Legal Authority**

Within Russia, laws are established at the federal level to create broad

indigenous policies, while regional authorities create policy distinctions and specifics that allow for specialized application. Federal law formally protects indigenous peoples, but regional policies may undermine federal intent given wide variations in goodwill, resources, and enforcement. It is regional government that takes into account the national and ethnic characteristics of the population, a responsibility established during the Soviet Union's creation of autonomous oblasts. Civil society in Russia, to include indigenous networks, is under transition. The potential for indigenous mobilization depend on sustaining knowledge communities and informal networking at both domestic and international levels.

In Russia's current environment of inconsistent application of indigenous peoples' rights and their tentative trust that the federal government will honor past laws, now is the time for indigenous communities to prioritize rights-affirming strategies. Many scholars recommend prioritizing land rights first, as these form the basis for cultural rights.<sup>24</sup> Second, ethnic identification of indigenous peoples require solutions, as there are ethnic groups that can make a strong case as indigenous peoples, yet are denied legal benefits due to Russia's arbitrary classification requirements

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<sup>23</sup> Zamoskvorechey District Court. Mosow, RU. June 29, 2012; Moscow City Court, Moscow, RU. October 18, 2012.

<sup>24</sup> Kryazhkov, "Development of Russian Legislation on Northern Indigenous Peoples."

(most notably its population limitation). To broaden the definition of indigenous communities to indigenous peoples themselves is a fundamental step in decolonizing processes. Third, indigenous groups must leverage their presence in representative bodies to promote legal developments that address not just political and socioeconomic relevance to indigenous communities, but also traditional knowledge and spiritual relevance. There is a great deal of material and intellectual capital from international indigenous organizations, as well as legal precedence, from which Russian indigenous peoples may draw.

### Final Thoughts

The perseverance of indigenous communities to maintain cultural and land rights despite federal and regional assimilation efforts testifies to the strength of the communities of indigenous peoples in Russia's far north. The possibilities for Russian indigenous communities today have been shaped by the turmoil of the early 1990s and the bi-level

authorities in Russia. While all groups have been affected by federal law repeals and lack of policy consistency, connections with international communities show promise for continued forward movement. RAIPON's association with the international Saami Council and four other international indigenous associations in the Arctic Council are examples of transboundary knowledge communities furthering domestic rights. Ultimately, the indigenous people of Northern Russia face a vastly different political environment than the circumpolar indigenous peoples residing in liberal states, and therefore they face unique domestic challenges. While each unique situation and progress varies, the narratives remain part of the common story of decolonization.

